

REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, 31-34 and 37-38 are in the application. Claims 3-7, 10, 13, 17-21, 25-27, and 29-30 are presently withdrawn in view of a previous election. Through this amendment, claims 1 and 15 have been amended, claims 35 and 36 have been cancelled, and new claims 37 and 38 have been added.

In the Official Action, the Examiner rejected claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, and 31-36 under 35 U.S.C. §102(b) as being allegedly anticipated by Adams (U.S. Patent No. 2,585,527).

Adams is directed to a slitted resilient closure for containers. (See, Title). As indicated at col. 1, ll. 1-3, the closure is "a closure for containers from which pastes, liquids, powders, and like materials are to be dispensed." In particular, the closure includes a slit which may be opened or closed to allow for dispensing material. (Col. 2, ll. 6-9). The closure includes a cap 13 formed of a resilient distortable material in which an incision 15 is present which defines the slit. (Col. 2, ll. 32-35). The incision 15 is openable to allow for product flow. (Col. 3, ll. 29-36; Figs. 1 and 7).

First, it is noted that claims 1 and 15 refer to a "syringe", and claims 33 and 34, which respectively depend from claims 1 and 15, indicate that the "syringe is a medical syringe". In the

Official Action, the Examiner asserted that the "broadest definition of syringe as provided by Merriam Webster Online Dictionary is 'a device used to inject fluids into or withdraw them from something,' which defines the device of Adams." The Examiner's assertion is respectfully traversed. The container disclosed in Adams is not a syringe. The Adams container is a compactable tube, like a toothpaste tube, which is compacted to urge contents therefrom. One skilled in the art understands a "syringe", and much more a "medical syringe", to be a syringe for medical purposes and not a compactable tube as disclosed in Adams. Although claim terminology is to be given its broadest reasonable interpretation during examination, that interpretation must be consistent with the specification and with the interpretation that those skilled in the art would reach. (See, MPEP §2111). As set forth at MPEP §2111,

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." . . . Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms may be ascertainable by reference to the description."
37 CFR 1.75(d)(1).

(quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005)).

With reference to paras. [0003] – [0005] of the subject application, a "syringe" is clearly described in the specification as a medical syringe suitable for medical injections. This is also an interpretation that one skilled in the art would reach. In view of this interpretation, no "syringe", much less a "medical syringe", is disclosed in Adams.

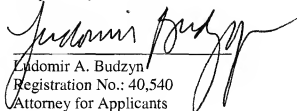
Moreover, claims 1 and 15, the only pending independent claims in the application, have been amended to indicate that "said tip cap defines a continuous and uninterrupted sealing surface which continuously seals the tip of the syringe and contains the medicament within the syringe when said tip is releasably received in said shaft of tip cap and until said tip cap is removed from said syringe, the medicament within the syringe being solely accessible through the tip of the syringe with removal of said tip cap." In contrast, Adams discloses a closure which includes an incision which is opened to allow for dispensing of a product. Accordingly, the Adams' closure does not rely on removal from the syringe to release its seal; rather, it is intentionally and, by design, openable while being mounted to the container to allow product to flow from the container. In addition, the Adams closure does not provide a continuous and uninterrupted sealing surface. Rather, an openable incision is formed in the closure. The incision provides access to the contents of the syringe through the syringe without removal of the closure, in contrast to the claimed invention.

Moreover, there is no manner by which the Adams closure can be modified, since an opening is absolutely required to permit dispensing from the associated container. Adams can not be modified to avoid the incision 15. It is respectfully submitted that claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, 31-34 and 37-38 are patentable over Adams.

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Favorable action is earnestly solicited. If there are any questions, or if additional information is required, the Examiner is respectfully requested to contact Applicants' attorney at the number listed below.

Respectfully submitted,


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